

No. 1-11-3050

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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*IN RE* MARRIAGE OF: )  
)  
TERESA FISCHER, ) Appeal from  
) the Circuit Court  
) of Cook County  
Petitioner-Appellee, )  
)  
v. ) No. 07 D 10858  
)  
BRUCE FISCHER, ) Honorable  
) Leida J. Gonzalez Santiago,  
Respondent-Appellant. ) Judge Presiding.

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JUSTICE QUINN delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The trial court did not err in finding certain assets to be part of the marital estate and the court’s valuation for each party complied with the Illinois Marriage and Dissolution of Marriage Act and was not against the manifest weight of the evidence. The court’s rulings on petitioner’s requests for respondent to provide maintenance to petitioner and to contribute to the payment of petitioner’s attorneys fees were not error.

¶ 2

## I. INTRODUCTION

¶ 3 On October 29, 2007, petitioner-appellee, Teresa Fischer (“Theresa”), born July 31, 1959, filed a petition for dissolution of her marriage from respondent-appellant, Bruce D. Fischer (“Bruce”), born July 3, 1944. The parties were married on August 15, 1997, and there were no children from the decade-long marriage. The trial court heard evidence and argument on the afternoon of September 20, 21 and 22, 2010. Theresa and Bruce were the only witnesses who testified in the case. On August 3, 2011, the trial court issued a fifteen page judgment for dissolution of the parties’ marriage which included detailed findings on property distribution. On appeal, Bruce contends that the trial court erred by: (1) granting Teresa 50% of the assets the court ruled to be marital property, (2) ordering that Teresa receive three years of maintenance of \$3,000 per month from Bruce, reviewable after three years, (3) granting Teresa be given a contribution from Bruce of \$4,000 for her attorneys fees, and (4) denying Bruce’s posttrial motion for clarification of the judgment of dissolution of the marriage where Bruce alleges the court misapplied the law.

¶ 4

## II. FACTS

¶ 5 Teresa was the homemaker while married to Bruce and was responsible for all cooking, housecleaning, laundry, and other home duties like small home repairs, gardening and snow shoveling without any help from Bruce. Teresa had intermittent low paying employment as a babysitter and house cleaner. During their marriage, Bruce played the role of breadwinner as a teacher at Elmhurst College earning \$93,867.37 in 2009 gross income and collecting a \$1,800 monthly pension from a prior teaching job. As Director of Naylor Pipe Company, in 2009 he received \$11,000 and \$3,000 in dividends on the 250 shares of stock he owns which are valued at

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\$400 per share.

¶ 6 Teresa testified to current back problems requiring treatment from an orthopedic surgeon, including epidural injections for pain. She also testified to problems with her legs and foot. The back problems together with these problems cause her to take 10 to 15 minutes to get out of bed and difficulty bending and executing simple tasks like putting on shoes. Teresa also has fibroids, asthma and thyroid problems, all requiring treatment by medical professionals. She also testified to problems requiring treatment by a psychologist, mostly stemming from her relationship with Bruce. She testified to \$3,031.09 in current monthly expenses which include medical costs previously covered under medical insurance from Bruce's employment. Her living circumstances following her separation from Bruce consist of a modest \$600 per month apartment with almost no furniture where she must additionally pay for her own heat in the winter.

¶ 7 Bruce is not without his own health problems. He was recently diagnosed with prostate cancer and is participating in a clinical study.

¶ 8 The trial court determined that the property Bruce owned prior to the marriage was nonmarital property and belonged solely to Bruce. These assets include his residence located at 1744 North Wood Street, Chicago, IL which Bruce purchased in 1992 for \$90,000 and after extensive rehabilitation, is worth an estimated \$750,000. The residence also has a small apartment that generates \$990 per month in rental income. Bruce's second property determined to be nonmarital is a condominium at 1325 North State Street, Chicago, Illinois which Bruce owned for 25 years. He values the condo at \$250,000 and it generates \$1490 per month in rental income. The third parcel is 20 acres of land owned by Bruce since 1960. There was no evidence submitted to the court of the

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value of that land, however, Bruce testified he does not earn income from the 20 acres. In any event, it was also correctly ruled to be nonmarital property. Two other assets, 250 shares of Naylor Pipe Company stock worth about \$100,000 and a life insurance policy for Bruce with an approximate face value of \$5,000 and a surrender value of \$3,781.35 were ruled nonmarital property, belonging solely to Bruce as both were acquired prior to the marriage. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 172 (2000). Bruce also inherited \$200,000 during the marriage and there was no evidence he commingled those funds, so it was correctly determined to be nonmarital property. *In re Marriage of Hahin*, 266 Ill. App. 3d 168, 171-72 (1994). None of the above decisions are contested on appeal.

¶ 9 Teresa does not own any financial accounts or stocks or bonds. There were two J.P. Morgan Chase bank accounts open during Teresa and Bruce's marriage: (1) an EC Direct Deposit Account, and (2) a SURS Automatic Direct Deposit Account. Although no bank statements for these two accounts were submitted as evidence at trial, the parties stipulated that the marital contribution to the EC Direct Deposit Account was \$214,000. Additionally, Bruce has three more accounts: (1) a Chase IRA account, (2) an E-Trade Account, and (3) a TIAA-CREFF retirement account.

¶ 10 When the parties married in 1997, the Chase IRA account had a \$70,000 balance and \$60,000 was added to the account during the marriage. The E-Trade Account had a \$700,000 balance when the parties married. In 1999, approximately two years after the parties married, the account suffered a \$400,000 trading loss. During the marriage, approximately \$190,000 was added to this account which as of September 2010 had a \$341,426 balance. The TIAA-CREFF account is a deferred compensation account through Elmhurst College where Bruce has worked for a decade during the parties' marriage with a balance of \$371,668.22. The court ruled that Teresa was to receive 50% of

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the \$214,000 marital contribution from the EC Direct Deposit Account, as well as 50% of the \$190,000 contribution to the E-Trade Account and 50% of the TIAA-CREFF retirement account from Elmhurst College.

¶ 11

### III. ANALYSIS

¶ 12 Bruce claims that the trial court misapplied the law when determining both what portion of the assets were marital property and the percentage that Teresa was entitled to receive.

Prior to disposing of property upon dissolution of a marriage, the trial court must classify property as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). Nonmarital property includes property acquired prior to the marriage. 750 ILCS 5/503(a)(6) (West 2010). In the division of property, “each spouse is to receive his or her own nonmarital property.” *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649 (1993); 750 ILCS 5/503(d) (West 2010) (“the court shall assign each spouse’ non-marital property to that spouse”).

¶ 13 The party claiming that certain property is nonmarital has the burden of proof on that issue. *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 504 (1993). “Any doubts as to the nature of the property are resolved in favor of finding that the property is marital.” *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258(2000) (quoting *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 141 (1996)). Therefore, the trial court’s classification of property as marital or nonmarital will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 502 (2009).

¶ 14 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act requires that the trial court divide marital property “in just proportions” considering the enumerated and relevant factors.

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750 ILCS 5/503(d) (West 2010). Such factors include, *inter alia*, the contribution of each party, the relevant economic circumstances of each spouse when division becomes effective, the reasonable opportunity of each spouse to further acquire capital assets and income, as well as other factors. *Id.*

¶ 15 The first step in the division of property is to establish the value of the parties' assets. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 504 (2009). A trial court's valuation of marital assets "is a question of fact that will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 151-52 (2005); *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 505 (2009) (the manifest-weight standard is applied "when assigning value to an asset after classification because valuation of marital assets is generally a factual determination").

¶ 16 It is well-established that all "retirement benefits earned during a marriage are considered marital property." *In re Marriage of Parker*, 252 Ill. App. 3d 1015, 1021 (1993). Under the Illinois Marriage and Dissolution of Marriage Act, "All pension benefits...acquired by either spouse after the marriage and before a judgment of dissolution...are presumed to be marital property, regardless of which spouse participates in the pension plan." 750 ILCS 5/503 (b)(2) (West 2010).

¶ 17 The trial court justifiably determined that Teresa and Bruce are each entitled to 50% of those marital assets. The trial court deemed the even split appropriate because of the substantial nonmarital assets held by Bruce, the low amount of Teresa's current income and her current dire needs, as well as the fact that the court was awarding maintenance as reviewable in three years. We see no reasonable argument that this decision is against the manifest weight of the evidence before the trial court. Bruce believes that the 1999 full trading loss of \$400,000 for the E-Trade Account

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be apportioned throughout their full ten year marriage so as to diminish the \$190,000 marital contribution made to the account during the marriage. However, there was no financial evidence presented to the court so it could make any determination whatsoever as to which invested funds suffered a loss or to otherwise adopt such a calculation in the court's distribution of marital assets.

¶ 18 Secondly, Bruce claims that the trial court's ruling on the \$3,000 of monthly maintenance Teresa should be provided for three years is against the manifest weight of the evidence. We will not disturb a trial court's decision on maintenance unless we can clearly conclude that the decision reflects "a clear abuse of discretion." *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Id.* (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 19 Teresa posits that because the trial evidence demonstrated that she is in poor health, has not earned as much income as Bruce due in large part to her dedication to household duties, and lives in poverty because she has experienced a dramatic drop in her standard of living since their separation, her request was properly granted. The record also shows that Bruce has a substantial income and assets, including a teacher's pension to which Teresa was entitled to no amount at the time of the divorce, has substantial assets and an ability to continue to generate income with his Ph.D. and his rental properties and, therefore, can afford to pay this maintenance. Even acknowledging Bruce's current health problem of prostate cancer, and the fact that Teresa received half of the property determined to be marital property during the decade-long marriage, this maintenance amount is not shockingly unreasonable as it can reasonably be used to help Teresa

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improve her health, education and job prospects over a three year period so that she can have a better chance at becoming financially independent, despite being in her mid-fifties. It is, after all, a maintenance award that is reviewable after three years.

¶ 20 Given the totality of the evidence before the trial court, we cannot agree with Bruce's position that the judge's decision regarding the \$3,000 per month maintenance Bruce must provide Teresa for three years was unreasonable, nor can we conclude that it constituted an abuse of discretion.

¶ 21 Bruce's next contention is that the trial court erred in ordering him to contribute \$4,000 to Teresa's attorneys fees without holding an evidentiary hearing. In divorce decree proceedings, the allowance of attorneys fees is committed to the sound discretion of the trial court. *In re Marriage of Cierny*, 187 Ill. App. 3d 334, 347 (1989); *Brandt v. Brandt*, 99 Ill. App. 3d 1089, 1110 (1981). Pursuant to section 508 of the Illinois Marriage and Dissolution of Marriage Act, a trial court may order one spouse to pay a reasonable amount for the costs and attorneys fees incurred by the other spouse. 750 ILCS 5/508 (a)(2) (West 2010); *In re Marriage of Cierny*, 187 Ill. App. 3d 334, 347 (1989). For an award of attorneys fees to be justified, it must be shown that the spouse seeking attorneys fees is financially unable to pay them and the other spouse is able to do so. *Id.* Given the evidence of Teresa's dire financial condition following the parties' separation, the court was well within its discretion in requiring Bruce to pick up a portion of Teresa's attorneys fees.

¶ 22 Additionally, when the opposing spouse does not request a hearing on the matter of attorneys fees, the right to a hearing is waived and the trial court may make a decision based on the financial conditions of the parties as shown in the record. *Id.* By failing to request a hearing, Bruce forfeited

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any claim regarding Teresa's ability to pay or the reasonableness of the fees charged by her attorney.

*Id.* Therefore, Bruce's appeal of this issue must be rejected on this ground, as well. Accordingly, this court will only disturb a trial judge's decision regarding attorneys fees "where it appears that the exercise of that discretion is clearly abused." *Id.* In the case at bar, there were billing records submitted by Teresa's attorney as well as success by her attorney. Numerous contested assets were determined to be marital property and, therefore, several issues were resolved in her favor. We acknowledge that Bruce incurred his own attorneys fees in defending against the property disposition in their dissolution of marriage, but Bruce is clearly in the better financial position to help shoulder this burden of the parties. Accordingly, we find no error in the court's ruling that Bruce contribute \$4,000 to Teresa's attorneys fees, especially since Bruce never requested a hearing on the matter. The trial court was correct in determining this contested issue on the evidence of record submitted by the parties.

¶ 23

#### IV. CONCLUSION

¶ 24 For all the aforementioned reasons, the judgment of the circuit court on the dissolution of this marriage is affirmed.

¶ 25 Affirmed.